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EXAMINER

DOUGLAS, STEVEN O

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 9, Applicant's use of the terminology "at least about" (line 3) renders the claim indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-7, 9-13 and 154 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argraves (US 6,298,850).

The Argraves reference discloses a nasal cannula (see Figs 1-4) including at least one support tube substantially as claimed, but fails to disclose the support tube as having a 10% tensile modulus less than 200 psi (claim 4 and 10), a hardness between 40 and 75 Shore A (claim 5 and 11), a compression set less than 45% at 23 degrees C per ASTM D-746 (claim 7), a compression set less than 45% at 23 degrees C per ASTM D-395 (claim 6 and 12), a brittle temperature less than -40degrees C per ASTM D-746 (claim 13), or disclose manufacturing the

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tube of a polyvinyl chloride compound including a polyvinyl chloride resin having an average molecular weight of at least about 100,000 (claims 9 and 15).

In regard to claims 4-7 and 10-13, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the material in which the Argraves tube have a 10% tensile modulus less than 200 psi (claim 4 and 10), a hardness between 40 and 75 Shore A (claim 5 and 11), a compression set less than 45% at 23 degrees C per ASTM D-746 (claim 7), a compression set less than 45% at 23 degrees C per ASTM D-395 (claim 6 and 12) and a brittle temperature less than -40degrees C per ASTM D-746 (claim 13), since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

In regard to claims 9 and 15, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device of a polyvinyl chloride compound including a polyvinyl chloride resin having an average molecular weight of at least about 100,000 (claims 9 and 15), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

Applicant's arguments with respect to claims 4-7,9-13 and 15 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 1-3 and 20-24 are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Steven O. Douglas/ whose telephone number is (571) 272-4885.

The examiner can normally be reached on Mon-Thurs 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/
Primary Examiner
Art Unit 3771

SD
2/12/09